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SNELL & WILMER ONE ARIZONA CENTER 400 EAST VAN BUREN PHOENIX, AZ 850040001			WALSH, DANIEL I	
			ART UNIT	PAPER NUMBER
			2876	

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/710,307

Applicant(s)

BONALLE ET AL.

Examiner

Daniel I. Walsh

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7-04, 8-04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### DETAILED ACTION

1. Receipt is acknowledged of the IDS of 1 July 2004 and 5 August 2004.

#### *Double Patenting*

2. Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 11, 44, and 12-21 of copending Application No. 10/710,310, 10/710,311.

Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 12, 44, and 13-22 of copending Application No. 10/710,315, 10/710,326, 10/710,328, and 10/710,329.

Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 11, 43, and 12-21 of copending Application No. 10/710,317, 10/710,323, 10/710,324, 10/710,325, and 10/710,327.

Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 13, 45, and 14-23 of copending Application No. 10/710,319.

Claims 1, 8, 11, and 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 6, 2, of copending Application No. 10/710,308.

Claims 1-4, 8, and 11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 5, and 7 of copending Application No. 10/710,309.

Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 10/708,822.

Claims 1, 8, and 11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6 of copending Application No. 10/708,823.

Claims 1-5, 8, and 11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 and 7 of copending Application No. 10/708,824.

Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 11, 42, and 12-21 of copending Application No. 10/708,825.

Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 11, 44, and 12-21 of copending Application No. 10/708,826.

Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 12, 44, and 13-22 of copending Application No. 10/708,827, 10/708,833, 10/708,835, and 10/708,836.

Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 11, 43, and 12-21 of copending Application No. 10/708,828, 10/708,830, 10/708,831, 10/708,832, and 10/708,834.

Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 13, 45, and 14-23 of copending Application No. 10/708,829.

3. Although the conflicting claims are not identical, they are not patentably distinct from each other because the Applications all deal with verifying a biometric to authorize a transaction, though some may include specific types of biometrics, such biometrics are well known and conventional in the art, and the '307 Patent Application is a broader recitation of a biometric, in these instances.

For instance:

In claim 1 of the present claimed invention and claim 1 of the '310 Patent Application the Applicants claim:

i) "...smartcard transaction system... proffered biometric ...verify...facilitate... transaction." (see claim 1), whereas in the '310 Patent Application the Applicants claim "...smartcard transaction system... proffered biometric ...verify... facilitate... transaction." (see claim 1). The Examiner notes that a fingerprint is a type of biometric.

In claim 2 of the present claimed invention and claim 2 of the '310 Patent Application the Applicants claim:

ii) "...one of a smartcard, a reader, and a network." (see claim 2), whereas in the '310 Patent Application the Applicants claim "...one of a smartcard, a reader, and a network." (see claim 2).

In claim 3 of the present claimed invention and claim 3 of the '310 Patent Application the Applicants claim:

iii) "...finite number of scans." (see claim 3), whereas in the '310 Patent Application the Applicants claim "...finite number of scans." (see claim 3).

In claim 4 of the present claimed invention and claim 4 of the '310 Patent Application the Applicants claim:

iv) "...log at least...sample." (see claim 4), whereas in the in '310 Patent Application the Applicants claim "...log at least...sample." (see claim 4).

In claim 5 of the present claimed invention and claim 5 of the '310 Patent Application the Applicants claim:

v) "...database...data packet...criminal information." (see claim 5), whereas in the '310 Patent Application the Applicants claim "...database...data packet...criminal information." (see claim 5).

In claim 6 of the present claimed invention and claim 6 of the '310 Patent Application the Applicants claim:

vi) "...database...remote server...smartcard system." (see claim 6), whereas in the '310 Patent Application the Applicants claim "...database...remote server...smartcard system." (see claim 6).

In claim 7 of the present claimed invention and claim 7 of the '310 Patent Application the Applicants claim:

vii) "...authorized sample receiver." (see claim 7), whereas in the '310 Patent Application the Applicants claim "...authorized sample receiver." (see claim 7).

In claim 8 of the present claimed invention and claim 11 of the '310 Patent Application, the Applicants claim:

viii) "...compare a proffered...with stored..." (see claim 8), whereas in the '310 Patent Application the Applicants claim "...compare a proffered...with a stored..." (see claim 11).

In claim 9 of the present claimed invention and claim 44 of the '310 Patent Application the Applicants claim:

ix) "...characteristic of a biometric sample...minutia...body heat." (see claim 9), whereas in the '310 Patent Application the Applicants claim "...comparing...fingerprint minutia." (see claim 44).

In claim 10 of the present claimed invention and claim 12 of the '310 Patent Application the Applicants claim:

x) "...vendor device and local CPU..." (see claim 10), whereas in the '310 Patent Application the Applicants claim "...vendor device and local CPU." (see claim 12).

In claim 11 of the present claimed invention and claim 13 of the '310 Patent Application the Applicants claim:

xi) "...registered biometric sample." (see claim 11), whereas in the '310 Patent Application the Applicants claim "...registered fingerprint sample." (see claim 13).

In claim 12 of the present claimed invention and claim 14 of the '310 Patent Application the Applicants claim:

xii) "...at least one of...loyalty point information." (see claim 12), whereas in the '310 Patent Application the Applicants claim "...at least one of...loyalty point information.." (see claim 14).

In claim 13 of the present claimed invention and claim 15 of the '310 Patent Application the Applicants claim:

xiii) "...different registered biometric...loyalty point information." (see claim 13), whereas in the '310 Patent Application the Applicants claim "...different registered fingerprint...loyalty point information." (see claim 15).



In claim 14 of the present claimed invention and claim 16 of the '310 Patent Application the Applicants claim:

xiv) "...primarily associated...secondarily associated...first user information." (see claim 14), whereas in the '310 Patent Application the Applicants claim "...primarily associated...secondarily associated...first user information." (see claim 16).

In claim 15 of the present claimed invention and claim 17 of the '310 Patent Application the Applicants claim:

xv) "...authentication upon verification..." (see claim 15), whereas in the '310 Patent Application the Applicants claim "...authentication upon verification..." (see claim 17).

In claim 16 of the present claimed invention and claim 18 of the '310 Patent Application the Applicants claim:

xvi) "...deactivate upon rejection..." (see claim 16), whereas in the '310 Patent Application the Applicants claim "...deactivate upon rejection..." (see claim 18).

In claim 17 of the present claimed invention and claim 19 of the '310 Patent Application the Applicants claim:

xvii) "...notification upon detection..." (see claim 17), whereas in the '310 Patent Application the Applicants claim "...notification upon detection..." (see claim 19).

In claim 18 of the present claimed invention and claim 20 of the '310 Patent Application the Applicants claim:

xviii) "...non financial transaction." (see claim 18), whereas in the '310 Patent Application the Applicants claim "...non financial transaction." (see claim 20).

In claim 19 of the present claimed invention and claim 21 of the '310 Patent Application the Applicants claim:

xix) "...secondary security procedure" (see claim 19), whereas in the '310 Patent Application the Applicants claim "...secondary security procedure." (see claim 21).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Re the additional Applications listed above, the Examiner notes that they are rejected in the same manner as discussed above with regard to the '311 Patent Application, as they all merely recite obvious types of biometrics used in verification of smartcard transactions. The 10/708,xxx series of patent applications, though drawn to a transponder and not a smartcard, are also rejected in the same manner. The Examiner notes that the use of a transponder in place of smart card is obvious to one of ordinary skill in the art (see teachings of Black below, which recite either a transponder, card, or other type of wireless device maybe used to facilitate biometric verification for a transaction.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 8, 9, 11, 12, 15, 18, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Black (US 2005/0122209).

Re claim 1 Black (US 2005/0122209) teaches a smartcard transaction system configured with a biometric security system, the system comprising: a smartcard configured to communicate with a reader; a reader configured to communicate with the system; a biometric sensor configured to detect a proffered biometric sample, the biometric sample configured to communicate with the system; and, a device configured to verify the proffered biometric sample to facilitate a transaction (FIG. 1C, which teaches a smartcard (abstract), smartcard reader, biometric sensor (step 6 of FIG. 1C), and steps 7+ which teach authentication and verification to facilitate a transaction (by a device)).

Re claim 2, Black teaches the sensor is configured to communicate with the system via at least one of a smartcard, a reader, and a network (FIG. 1C).

Re claim 8, Black teaches a device configured to compare a proffered biometric sample with a stored biometric sample (FIG. 1C ).

Re claim 9, Black teaches a device configured to compare at least one characteristic of a biometric sample including at least one of minutia, vascular patterns, prints, waveforms, odorants, nodal points, reference points, size, shape, thermal patterns, blood flow, and body heat (FIG. 1C which teaches comparison of fingerprint and signature).

Re claim 11, Black teaches the comparison of sensed data with reference data (FIG. 1C). The reference data is a registered biometric sample.

Re claim 12, Black teaches a registered biometric sample is associated with at least one of personal information, credit card information, debit card information, savings account information, membership information, PayPal account information, Western Union account information, electronic bill payment information, automatic bill payment information and loyalty point information (abstract, as an account is linked with the biometrics provided during a registration).

Re claim 15, as Black teaches that an account is only accessed after a sample is verified, it is interpreted as beginning authentication after the sample is verified.

Re claim 18, Black teaches the device configured to verify is configured to facilitate at least one of access, activation of a device, a financial transaction, and a non-financial transaction (abstract).

Re claim 19, Black teaches the device configured to verify is configured to facilitate the use of at least one secondary security procedure (signature, metrics FIG. 1C).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 3-7, 10, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black.

Re claim 3, Black teaches the biometric sample is captured (see above). Though silent to a sensor facilitating a finite number of scans, it is obvious that a finite number of scans is facilitated (one for example) to receive the biometric.

Re claim 4, Black teaches that the digital and electronic signatures are captured and preserved in a transaction record (paragraph [0125]). This is interpreted to include logging at least one of a detected biometric sample, processed biometric sample, and stored biometric sample. Though Black is silent to the biometric sensor doing the logging, the Examiner notes

that it would have been obvious for the sensor to do the logging, since it captures/receives the inputs.

Re claim 5, Black teaches that a data packet is stored remotely (host computer) where the data packet includes at least one of proffered and registered biometric samples, proffered and registered user information, terrorist information, and criminal information (paragraph [0125], FIG. 10A-11B and 14A-14B). The Examiner notes that though such data packet/information is shown with reference to a transponder/RFID, Black states that the device can be a smartcard, transponder, etc. (abstract). Accordingly, it is obvious that such teachings can be applied to smartcards to produce expected results for data storage and retrieval for verifying a transaction using biometrics, especially since it has been taught that such information can be stored on the transponder/card itself or remotely (for security reasons) (paragraph [0090] +). Though silent to a database, the Examiner notes that storing records on a computer in a database is an obvious expedient, well within the skill in the art to organize data for efficient comparison and retrieval.

Re claim 6, as discussed above, the data packet information can be stored on a host computer, which is interpreted to include at least one of the smart card, smartcard reader, sensor, remote server, merchant server, and smartcard system. Though not specifically identified as a server, it would be obvious that the computer is a server, in order to process data/access remotely, for example.

Re claim 7, Black teaches the host computer is associated with the registering and storing/processing of the biometric data used to verify transactions. Though silent to an authorized sample receiver, it is obvious that such a receiver would be authorized, as it is used to facilitate and verify biometrics for transactions.



Re claim 10, as Black teaches a card reader processor (FIG. 1A, 1B, 1C) in communication with the host computer, it is understood that the card reader processor is used to compare the samples (see claim 1 of Black). It is obvious that different embodiments of Black teach the use of a transponder and that the local processor performs comparison, and that such teaching can be applied to the instance of a smart card, in order to verify proffered biometric data to facilitate a transaction. The Examiner notes that both comparison done remotely or locally are both obvious expedients, based on the system design and security of the system, but is nonetheless within the ordinary skill in the art.

Re claim 17, though Black is silent to the sensor providing notification upon detection of a sample, the Examiner notes that it is well within the skill in the art to provide notification that a sample has been detected, to provide indication to the user (see Janiak et al. US 2002/0097142). As Black indicates when a sample has been authorized (transaction allowed) it would have been obvious to indicate when the sample is read/detected as a means to provide guiding information to the user.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Martizen et al. (US 2002/0191816).

Re claim 13, the limitations of Black have been discussed above.

Black is silent to different biometric samples being associated with a different one of personal information, credit card information, debit card information, savings account information, membership information, PayPal account information, Western Union account information, electronic bill payment information and loyalty point information.

Maritzen et al. teaches that different biometric samples can be associated with a different one of personal information, credit card information, debit card information, savings account information, and loyalty point information (paragraph [0074]).

At the time the invention was made, it would have been obvious to an artisan of ordinary skill in the art to combine the teachings of Black with those of Maritzen et al.

One would have been motivated to do this to associate different biometric samples with different accounts for ensuring unique security for different accounts.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Moebs et al. (US 2005/0065872).

Re claim 14, the limitations of Black have been discussed above.

Black is silent to a biometric sample being secondarily associated with second user information comprising at least one of personal information, savings account information, membership information, PayPal account information, Western Union account information, electronic bill payment information, automatic bill payment information and loyalty point information, and wherein the second user information is different than the first user information.

Moebs et al. teaches that a customer can avoid overdrafts by preauthorizing the financial institution to tie the customer's checking account to one or more of the customers other accounts such as deposit accounts (paragraph [0017]). The Examiner notes that overdraft protection is well known and conventional in the art. Accordingly, the Examiner notes it would have been obvious that by linking an overdraft account to a primary account that is associated with the sample, that the overdraft account is interpreted as being secondarily associated with the sample, for if the primary account is overdrawn, the secondary account is drawn upon.



One would have been motivated to combine the teachings of Black with those of Moebs, in order to provide a secondary account for convenience of the user.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goodman (US 2002/0043566).

Re claim 16, the teachings of Black have been discussed above.

Though it is obvious that if the biometric samples do not match, that a transaction is permitted to be executed, Black is silent to the smartcard deactivating upon rejection of the biometric sample.

Goodman et al. teaches Goodman et al. teaches deactivation of a card if a predetermined amount of incorrect PIN attempts are detected (paragraph [0029]).

At the time the invention was made, it would have been obvious to an artisan of ordinary skill in the art to combine the teachings of Black with Goodman et al.

One would have been motivated to do this to increase the security of the system by disabling a card after a number of incorrect inputs.

Though Goodman is silent to a biometric input, the Examiner notes that Goodman supplies a teaching for disabling a card when a matching input is not received. As Black teaches not allowing a transaction, when a input is not matched (and Haala (US 2005/005172 and US 2005/0102524 teach contacting authorities), it would have been obvious to use the teachings of Goodman to expand the security measures and to disable the card so that unauthorized used does not occur, when biometric inputs do not match, where biometric inputs are interpreted as an alternative security measure to PIN inputs, to provide additional security.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Gokcebay (US 5,245,329), Dolphin (US 5,677,953), Meadows et al. (US 5,869,822), Dunn et al. (US 5,987,155), Gray (US 6,268,788), Pare et al. (US 6,269,348), Takhar (US 2001/0053239), Iannacci (US 2002/0062249), Kawan (US 2002/0062284), Segal et al. (US 2002/0066784), Doyle et al. (US 2002/0095587), Janiak et al. (US 2002/0097142), Prokoski et al. (US 2002/0140542), Wang et al. (US 2002/0163421), Gravelle et al. (US 2002/178063), Simon (US 2003/0086591), Seifert (US 2003/0112120), Mitchell et al. (US 2003/0149661), Joseph (US 2003/0150911), Palmer et al. (US 2003/0266041), McCall et al. (US 2003/0229793), Hoffman et al. (US 2004/0020982), Koo (US 2004/0021552), Nugent (US 2004/0041021), Yamagishi (US 2004/0041690), Deyoe et al. (US 2004/0084542), Machida (US 2004/0131237), Doughty et al. (US 2004/0133787), Zuili (US 2004/0149827), Royer et al. (US 2004/0155101), Lee (US 2004/0195314), Barillova et al. (US 2004/0199469), Golden et al. (US 2004/0208343), Kotzin (US 2004/0257196), Doughty et al (US 2005/0001711), Haala (US 2005/0005172), Ikeda et al. (US 2005/0018658), Inabe (US 2005/0033992), Rothschild et al. (US 2005/0054438), Gotfried et al. (US 2005/0087597), Kuwana et al. (US 2005/0091325), Haala (US 2005/0102524), Arnouse (US 2005/0139669).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel I. Walsh whose telephone number is (571) 272-2409. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

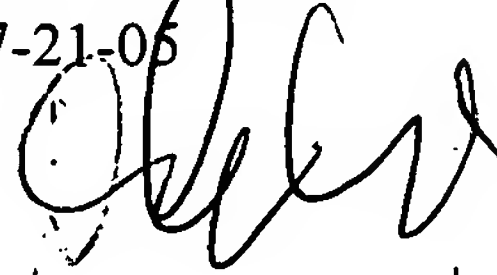
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel I Walsh

Examiner

Art Unit 2876

7-21-06

Daniel Walsh